

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Entergy Louisiana, Inc.

Docket No. EL06-29-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER

(Issued January 23, 2006)

1. On December 13, 2005, Entergy Louisiana, Inc. (Entergy Louisiana) filed a petition for declaratory order, requesting that the Commission find that Entergy Louisiana, LLC (Entergy Louisiana Limited) may pay dividends from its Common Membership Interest (*i.e.* paid-in capital) accounts, after it completes a corporate restructuring on or about December 31, 2005, without violating section 305(a) of the Federal Power Act (FPA).¹ For the reasons stated below, we will grant Entergy Louisiana's petition for declaratory order.

Background

2. Entergy Louisiana, a public utility engaged in the generation, transmission and sales of electricity in the state of Louisiana has been authorized by the Commission to undertake a plan of internal corporate restructuring under which Entergy Louisiana, while remaining a direct subsidiary of Entergy Corporation, will become a Texas corporation (changing its name to Entergy Louisiana Holdings, Inc. (Entergy Louisiana Holdings)).² Entergy Louisiana Holdings will have two Texas limited liability company subsidiaries: Entergy Louisiana Limited and Entergy Louisiana Properties, LLC. Entergy Louisiana Limited will acquire the public utility assets and associated liabilities of Entergy Louisiana, will continue to operate the regulated utility business formerly operated by Entergy Louisiana, and will be a public utility under the FPA.

¹ 16 U.S.C. § 825d(a) (2000).

² *Entergy Louisiana, Inc.*, 112 FERC ¶ 62,209 (2005).

3. Entergy Louisiana maintains that, after the restructuring has been completed, the net of assets and liabilities transferred as part of the restructuring will be converted into equity in Entergy Louisiana Limited. Entergy Louisiana Limited will issue all of its Common Membership Interests to Entergy Louisiana Holdings (which will, as noted above, continue as a direct subsidiary of Entergy Corporation). Entergy Louisiana also states that, contemporaneously with the issuance of Common Membership Interests to Entergy Louisiana Holdings, Entergy Louisiana Limited intends to issue for sale to unaffiliated third parties certain Cumulative Preferred Interests.

4. Entergy Louisiana states that, based on its prior practice, “[t]he holders of the Common Membership Interests and Cumulative Preferred Interests of [Entergy Louisiana Limited] will reasonably expect to receive dividends after the restructuring has occurred.”³ As a result of the accounting for this restructuring, however, Entergy Louisiana Limited will not have any retained earnings recorded on its balance sheet. Accordingly, in order for Entergy Louisiana Limited to be able to pay dividends after the restructuring has been completed but before it has accrued sufficient earnings to provide funds for payment of such dividends, Entergy Louisiana requests a declaratory order finding that Entergy Louisiana Limited may pay dividends from its Common Membership Interest accounts.

5. Entergy Louisiana maintains that the payments of dividends by Entergy Louisiana Limited from Common Membership Interest accounts, subject to the conditions set forth in its petition, detailed below, is consistent with prior Commission precedent and thus permissible under section 305(a) of the FPA. First, Entergy Louisiana maintains that the source of the dividends will be clearly identified. Entergy Louisiana states that, initially, dividends will be paid from the paid-in Common Membership Interest accounts of Entergy Louisiana Limited, but adds that “[t]he assets and liabilities allocated to [Entergy Louisiana Limited] arose from transactions that were recorded as earnings and reflected in the retained earnings of [Entergy Louisiana].”⁴ Entergy Louisiana maintains that any dividends paid beyond the amount reflected in the retained earnings of Entergy Louisiana will be paid by Entergy Louisiana Limited from Common Membership Interest accounts “only to the extent that funds are available for this purpose without impairing the financial integrity of [Entergy Louisiana Limited].”⁵ Entergy Louisiana also states that the Common Membership Interest accounts used by Entergy Louisiana Limited for

³ Petition at 3.

⁴ *Id.* at 6.

⁵ *Id.*

payment of dividends will be clearly identified and properly recorded on its books and records in accordance with the Uniform System of Accounts.

6. Entergy Louisiana also asserts that the dividends that will be paid from Membership Interest accounts will not be excessive, maintaining that “[t]o the extent that dividends are paid from balances in Membership Interest accounts that had been included as Retained Earnings of [Entergy Louisiana] prior to restructuring, the funds used for payment of dividends will simply represent funds that had been available for this purpose prior to the restructuring.”⁶

7. Entergy Louisiana notes that during the transition period after its restructuring has been completed but prior to when Entergy Louisiana Limited has accrued sufficient retained earnings of its own to support payment of dividends, Entergy Louisiana Limited “may also pay dividends from Membership Interest Accounts in excess of amounts that had been classified as Retained Earnings of [Entergy Louisiana] prior to the restructuring, so long as its proprietary capital ratio is and will remain above 30%.”⁷ Entergy Louisiana asserts that this transition period is not expected to last more than three years.

8. Finally, Entergy Louisiana maintains that the payment of dividends from Common Membership Interest accounts, subject to the afore-mentioned limitations, will not harm shareholders. Entergy Louisiana asserts that Entergy Louisiana Limited “will not pay dividends from [these accounts] under circumstances in which the payment of such dividends might impair its financial integrity.”⁸ Entergy Louisiana also notes that, because Entergy Louisiana Holdings will be the only entity holding Common Membership Interests of Entergy Louisiana Limited, its percentage ownership interest in such funds will remain consistent prior to and after the payment of dividends.

Notice of Filing

9. Notice of Entergy Louisiana’s December 13, 2005 filing was published in the *Federal Register*, 70 Fed. Reg. 76,795 (2005), with intervention or protests due on or before December 29, 2005. None was filed.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 8.

Discussion

10. We will grant Entergy Louisiana's petition because the concerns underlying section 305(a) of the FPA are not present in the circumstances of this transaction.

11. Section 305(a) provides that:

It shall be unlawful for any officer or director of any public utility to receive for his own benefit, directly or indirectly, any money or thing of value in respect of the negotiation, hypothecation, or sale by such public utility of any security issued or to be issued by such public utility, or to share in any of the proceeds thereof, or to participate in the making or paying of any dividends of such public utility from any funds properly included in capital account.⁹

12. The concerns underlying the enactment of section 305(a) included "that sources from which cash dividends were paid were not clearly identified and that holding companies had been paying out excessive dividends on the securities of their operating companies. A key concern, thus, was corporate officials raiding corporate coffers for their personal financial benefit."¹⁰

13. In the proposed transaction, none of these concerns is evident. Entergy Louisiana has clearly identified the source from which payment will be made. There is also nothing to indicate that any dividends paid will be excessive. Further, the conditions proposed for when Entergy Louisiana Limited might pay dividends from Common Membership Interest accounts in excess of amounts classified as retained earnings of Entergy Louisiana prior to the restructuring are sufficient to provide assurance that the payment of

⁹ 16 U.S.C. § 825d(a) (2000).

¹⁰ *Citizens Utils. Co.*, 84 FERC ¶ 61,158 at 61,865 (1998) (internal citations omitted); *accord New England Power Co.*, 89 FERC ¶ 61,266 at 61,780 (1999); *Delmarva Power and Light Co.*, 91 FERC ¶ 61,043 at 61,158 (2000); *Pub. Serv. Co. of New Mexico*, 93 FERC ¶ 61,213 at 61,705 (2000); *Niagara Mohawk Holdings, Inc.*, 95 FERC ¶ 61,381 at 62,416 (2001), *order on reh'g*, 96 FERC ¶ 61,144 (2001), *order on subsequent compliance filing*, 99 FERC ¶ 61,323 (2002); *ALLETE, Inc.*, 107 FERC ¶ 61,041 at P 10 (2004); *Exelon Corp.*, 109 FERC ¶ 61,172 at P 8 (2004).

dividends will not result in the abuses underlying section 305(a).¹¹ However, we remind Entergy Louisiana Limited that if the proprietary capital ratio of Entergy Louisiana Limited falls below 30 percent, the company may not pay dividends out of paid-in capital and must report to the Commission.¹² Finally, the proposed dividend will not have an adverse effect on the value of shareholder interests; the ownership interest of Entergy Louisiana Holdings in such funds will be consistent prior to and after the payment of dividends.

14. For these reasons, and under the circumstances of this case, we will grant the petition and find that section 305(a) of the FPA is not a bar to the payment of dividends out of paid-in capital in this instance.

The Commission orders:

(A) Entergy Louisiana's petition for declaratory order is hereby granted, as discussed in the body of this order.

¹¹ The 30 percent proprietary capital ratio proposed in the petition is consistent with Commission precedent. *See Niagara Mohawk Holdings*, 95 FERC at 62,416. Moreover, we find noteworthy that such action is expected to be taken only within a three-year transition period.

¹² The Commission believes it is important to note that, pursuant to *Quarterly Financial Reporting and Revisions to the Annual Reports*, Order No. 646, 69 Fed. Reg. 9,030 (Feb. 26, 2004), FERC Stats. & Regs. ¶ 31,158 (2004), *order on reh'g*, Order No. 646-A, 69 Fed. Reg. 32,440 (June 10, 2004), FERC Stats. & Regs. ¶ 31,163 (2004), if the equity-to-debt ratio of Entergy Louisiana Limited falls below the 30 percent threshold, the company is required to inform the Commission as part of the "Important Changes" in its quarterly financial reports and annual reports.

(B) Entergy Louisiana Limited must inform the Commission of any change in circumstances that would reflect a departure from the facts the Commission relied upon in granting the petition.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.